

1 WO

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Sandra Y. McCoy,) No. CV-04-0799-PHX-DGC

10 Plaintiff,) **ORDER**

11 vs.)

12 JoAnne B. Barnhart, Commissioner of)
13 Social Security Administration,)

14 Defendant.)

15 _____)

16 Plaintiff has filed an Application for Award of Attorneys' Fees under the Equal
17 Access to Justice Act, seeking \$1,193.25 in fees and \$150.00 in costs. Doc. #26. Defendant
18 opposes the Application, arguing that Plaintiff's fee request should be reduced by 1.5 hours
19 spent opposing Defendant's motion to remand this case, and that Plaintiff's request for an
20 enhanced hourly rate should be denied. Doc. #27. Plaintiff has filed a reply. Doc. #28.

21 The Court concludes that Plaintiff should recover fees for a total of 4.95 hours. The
22 Court will not allow Plaintiff's requested additional 1.5 hours. The Court concludes that this
23 time was incurred unnecessarily. Plaintiff opposed the terms on which Defendant sought to
24 remand this case, arguing that a remand might result in Defendant's reconsideration of a
25 different case resolved in Plaintiff's favor. Because this Court had no authority to provide
26 directions regarding the reopening of a case not before it, Plaintiff's opposition to the terms
27 of the remand was unnecessary.

28

1 The Court also concludes, however, that Plaintiff should recover fees at the hourly
2 rate of \$185.00. Pursuant to 28 U.S.C. § 2412(d)(2)(A)(ii), “attorney fees shall not be
3 awarded in excess of \$125 per hour unless the court determines that an increase in the cost
4 of living or a special factor, such as the limited availability of qualified attorneys for the
5 proceedings involved, justifies a higher fee.” Plaintiff’s request for a rate of \$185 per hour
6 represents an increase of \$60 above the statutory amount, and less when compared to the
7 adjusted base rate, which, taking into account cost of living increases since 1996, is \$153.75
8 for 2004 and \$158.75 for 2005.

9 The Ninth Circuit has held that attorneys practicing in the areas of Social Security law
10 can be reimbursed for amounts exceeding the statutory cap under certain circumstances. *See*
11 *Pirus v. Bowen*, 869 F.2d 536, 541-42 (9th Cir. 1991). “First, the attorney must possess
12 distinctive knowledge and skills developed through a practice specialty. Secondly, those
13 distinctive skills must be needed in the litigation. Lastly, those skills must not be available
14 elsewhere at the statutory rate.” *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991). The
15 Court concludes that Plaintiff’s request for \$185 per hour is appropriate under this standard.
16 Plaintiff’s counsel possesses distinctive knowledge and skill, that knowledge and skill was
17 required in this litigation, and the knowledge and skill cannot be obtained elsewhere at the
18 \$125 statutory rate.

19 **IT IS ORDERED** that Plaintiff's Application for Award of Attorneys' Fees under the
20 Equal Access to Justice Act (Doc. #26) is **granted**. Plaintiff is awarded \$915.75 in
21 attorneys' fees (\$185 x 4.95 hours) and \$150.00 in costs.

22 DATED this 26th day of July, 2006.

Daniel G. Campbell

David G. Campbell
United States District Judge